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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/779,551

02/11/2004

Jesus A. Dominguez

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NASA JOHN F. KENNEDY SPACE CENTER
MAIL CODE: CC-A/OFFICE OF CHIEF COUNSEL
ATTN: PATENT COUNSEL
KENNEDY SPACE CENTER, FL 32899

EXAMINER

DO, ANH HONG

ART UNIT

PAPER NUMBER

2624

MAIL DATE

DELIVERY MODE

06/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/779,551	Applicant(s) DOMINGUEZ ET AL.	
	Examiner ANH H. DO	Art Unit 2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/11 & 7/12/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/11/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-9 are drawn to a computer implemented process that merely manipulates data or an abstract idea, or merely solves a mathematical problem without a limitation to a practical application in the technological arts.

In order for a claimed invention to accomplish a practical application, it must produce a "useful, concrete and tangible result" *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02 (see MPEP 2106:II.A). A practical application can be achieved through recitation of "a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan", or "limited to a practical application within the technological arts" (MPEP 2106 IVB2(b)). Currently, claims 1-9 meet neither of these criteria. In order for the claimed process to produce a "useful, concrete and tangible" result, recitation of one or more of the following elements is suggested:

- * The manipulation of data that represents a physical object or activity transformed from outside the computer (MPEP 2106 IVB2(b)(i)).
- * A recitation of a physical transformation outside the computer, for example in the form of pre or post computer processing activity (MPEP 2106 IVB2(b)(i)).

* A direct recitation of a practical application in the technological arts (MPEP 2106 IVB2(b)(ii).

3. Claims 10-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 10-18 define a computer based structural organization embodying functional descriptive material. However, the claims do not define a computer readable medium or memory and is thus non-statutory for that reason (i.e., "when functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed a computer based structural organization can range from paper on which the program is written, to a program simply contemplated and memorized by a person. The Examiner suggests amending the claims to embody the program on "computer-readable medium" or equivalent in order to make the claim statutory. Any amendment to the claim should be commensurate with its corresponding disclosure.

Claims 10-18 are drawn to functional descriptive material (i.e., "data structures and computer programs which impart functionally when employed as a computer component" at MPEP 2106.IV.B(1)). However, the program/algorithm itself merely manipulates data or an abstract idea, or merely solves a mathematical problem without a limitation to a practical application in the technological arts. MPEP.IV.B2(a) (statutory Product Claims) states:

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“A claim limited to a... manufacture, which has a practical application in the technological arts, is statutory.”

In order for a claimed invention to accomplish a practical application, it must produce a “useful, concrete and tangible result”, *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02 (see MPEP 2106.II.A). Currently, the claims do not recite a practical application. In order for the claimed product to produce a ‘useful, concrete and tangible’ result, recitation of one or more of the following element is suggested:

- The manipulation of data that represents a physical object or activity transformed from outside the computer (MPEP 2106.IV.B2(b)(i)).
- A physical transformations outside the computer, for example in the form of pre or post computer processing activity (MPEP 2106.IV.B2(b)(i)).
- A direct recitation of a practical application in the technological arts (MPEP 2106.IV.B2(b)(ii)).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANH H. DO whose telephone number is 571-272-7433. The examiner can normally be reached on 5/4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 29, 2007.



ANH HONG DO
PRIMARY EXAMINER